



This document is scheduled to be published in the Federal Register on 08/29/2013 and available online at <http://federalregister.gov/a/2013-20802>, and on FDsys.gov

Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-13-0001

RIN 0563-AC24

Common Crop Insurance Regulations; Forage Seed Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add a provision to its regulations that provides forage seed insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crop programs. The intended effect of this action is to convert the Forage Seed pilot crop insurance program to a permanent insurance program for the 2015 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business (insert date 30 days after publication in the Federal Register), and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-13-0001, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Tim Hoffman, Director, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, P. O. Box 419205, Kansas City, MO 64141-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submission. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and

tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States.

The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss.

Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal

Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J, for the informal review process of good farming practices, as applicable, must be exhausted before any action against FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offered a pilot crop insurance program for forage seed beginning with the 2002 crop year. The pilot program was initially offered in 10 counties in California, Idaho, Montana, Nevada, Oregon, Washington and Wyoming. In the initial year, the program insured 104 producers and approximately 11,000 acres. Following an evaluation of the Forage Seed pilot program in 2006, FCIC's Board of Director's approved continuation and expansion until such time the program could be made permanent. In 2007, program changes included 2 additional counties and changes in the dates of the insurance period for Montana and Wyoming. Currently the provisions insure only forage seed that is contracted or grown as certified forage seed. All of the forage seed covered under the pilot program is alfalfa seed. For the 2012 crop year, 179 policies were sold and approximately 23,900 acres insured. This proposed rule will add the forage seed program to the code of federal regulations.

List of Subjects in 7 CFR Part 457

Crop Insurance, Forage Seed, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2015 and succeeding crop years as follows:

PART 457-COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Section 457.174 is added to read as follows:

§ 457.174 Forage Seed crop insurance provisions.

The forage seed crop provisions for the 2015 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation

Forage Seed Crop Provisions

1. Definitions.

Actual value. The dollar value received, or that could be received, for the forage seed if the forage seed production is properly handled in accordance with the requirements in the forage seed contract or the applicable certifying agency's requirements.

Adequate stand. A population of live plants that equals or exceeds the minimum required number of plants per square foot as shown in the actuarial documents.

Amount of insurance. The amount obtained by multiplying the production guarantee per acre for each type and practice in the unit by the insured acreage of that type and practice, by the applicable base price, and by the percentage of base price you elected. The total of these results will be the amount of insurance for the unit.

Base price. For seed under a forage seed contract, the price per pound (excluding any discounts or incentives that may apply) stated in the forage seed contract. For

certified forage seed not under a forage seed contract, and for forage seed producers who are also forage seed companies, the price contained in the actuarial documents.

Certification application. The form used to request certification of forage seed by the certifying agency.

Certification standards. The standards and procedures of the certification agency to assure genetic purity and identity of the seed certified.

Certified forage seed. Forage seed that meets the certification standards administered by a certifying agency at the time of harvest and that has been grown under a certification application accepted by the certifying agency on or before the acreage reporting date.

Certifying agency. An agency authorized under the laws of a State, Territory, or possession, to officially certify seed, which has standards and procedures to assure the genetic purity and identity of the seed certified, and approves certification applications for the certified forage seed that meets the certification standards at time of harvest.

Established stand. An adequate stand of live plants for crop years after the seed-to-seed year.

Fall planted. Forage seed crop planted after May 31 of the previous crop year.

Forage seed company. A business enterprise that possesses all licenses for marketing forage seed required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and capacity to accept and process the insured crop timely.

Forage seed contract. A written contract executed between the forage seed crop producer and a forage seed company containing, at a minimum:

- (a) The producer's commitment to plant, grow, and deliver the forage seed produced from such plants to the seed company;
- (b) The seed company's commitment to purchase all the production from a specified number of acres or the specified quantity of production stated in the contract; and
- (c) Either a fixed price per unit of the forage seed or a formula to determine the price per unit value of such seed. Any formula for establishing value must be specified in the written contract. If the formula uses a future price that is settled after the applicable acreage reporting date, then the base price contained in the actuarial documents will apply.

Forage seed crop. Small seeded legume plants grown for seed (e.g., alfalfa, clovers, etc.) shown in the actuarial documents.

Harvest. Removal of seed from the windrow or field.

Pound. Sixteen (16) ounces avoirdupois.

Price election. In lieu of the definition in section 1 of the Basic Provisions, the price election will be the base price and used for the purposes of determining premium and indemnity under the policy.

Qualified seed testing laboratory. Laboratory qualified by the State to test the forage seed to determine whether it qualifies as certified forage seed.

Seed-to-seed year. The calendar year in which planting occurs for spring planted forage seed and the subsequent calendar year for fall planted forage seed.

Spring planted. Forage seed crop planted before June 1 of the current crop year.

2. Unit Division.

In lieu of the optional unit provisions in section 34 of the Basic Provisions, you may select optional units by forage seed contract or variety if permitted by the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may elect only one percentage of base price and one coverage level for each forage seed crop grown in the county and designated in the actuarial documents. If separate base prices are available by forage seed crop type, the percentage election of base price and coverage level you choose for each forage seed crop type must be the same. For example, if you choose 100 percent of the base price and 65 percent coverage level for a specific forage seed crop type, you must choose 100 percent of the base price and 65 percent coverage level for all the forage seed crop types.

(b) For each unit, separate guarantees will be determined by forage seed crop type and practice.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is June 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

California and Nevada.....October 31;
All Other States.....September 30.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must submit to us a copy of your forage seed contract for your contracted forage seed acreage or, if not contracted, a copy of the accepted certification application for your certified seed acreage on or before the acreage reporting date. Failure to provide a copy of the forage seed contract or the certification application accepted by the certifying agency by the acreage reporting date will result in denial of liability and no indemnity due.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all types and practices of each forage seed crop you elect to insure, that is grown in the county and for which a premium rate is provided by the actuarial documents:

- (1) In which you have a share; and
- (2) That is grown solely for harvest as:
 - (i) Certified forage seed; or
 - (ii) Seed grown under a forage seed contract executed on or before the acreage reporting date.

(b) For contracted acreage of forage seed crops only, you will not be considered to have a share in the insured crop unless, under the terms of the forage seed contract, you are at risk of a financial loss at least equal to the amount of insurance on such acreage.

(c) In addition to the crop and acreage listed as not insured in sections 8 and 9 of the Basic Provisions, we will not insure any forage seed crop that:

(1) Is interplanted with another crop, unless otherwise specified in the Special Provisions;

(2) Is planted into an established grass or legume;

(3) Does not have an adequate stand at the beginning of the insurance period;

(4) Exceeds the age limitations for the forage seed crop or type contained in the Special Provisions; or

(5) Is utilized for any purpose during the crop year other than for seed production.

(d) A forage seed producer who is also a forage seed company may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions; and

(2) All the forage seed grown by the forage seed company is enrolled with the appropriate certifying agency.

8. Insurance Period.

(a) Insurance attaches on acreage with an adequate stand on the later of the date we accept your application or the applicable date as follows, unless provided otherwise in the Special Provisions:

(1) For fall planted seed-to-seed year and established stands of forage seed crops, coverage begins for each crop year on:

(i) October 1 for counties in Idaho, Montana, Oregon, Washington, Wyoming and other states; and

(ii) November 1 for counties in California and Nevada.

(2) For spring planted seed-to-seed year stands of forage seed crops coverage begins:

- (i) May 1 for counties in California and Washington; and
- (ii) May 15 for counties in Idaho, Montana, Nevada, Oregon, Wyoming and other states.

(b) The calendar dates for the end of the insurance period for counties in the following states are as follows unless otherwise provided in the Special Provisions:

- (1) California and Nevada.....October 31.
- (2) Idaho, Oregon, Montana, Washington, Wyoming
and all other states.....September 30;

9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects and plant disease, but not damage due to insufficient or improper application of control measures;
- (4) Wildlife;
- (5) Earthquake;
- (6) Volcanic eruption; or
- (7) Failure of the irrigation water supply, if caused by a peril specified in sections 9(a)(1) through (6) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) The crop not being timely harvested, unless such delay in harvesting is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (6);

(2) Insufficient supply of pollinators, as determined by us, unless lack of pollinators or pollination is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (7);

(3) Failure of the certification standard or forage seed company contract acceptance caused by failure to follow proper isolation requirements or inadequate weed control, as determined by us, unless such failure is solely and directly due to a cause of loss specified in sections 9(a)(1) through (6); or

(4) Failure of the certification standard or forage seed contract acceptance due to failure to follow all other certification or contract requirements, as determined by us, unless such failure is solely and directly caused by a cause of loss specified in sections 9(a)(1) through (6).

10. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage to your forage seed crop covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type and practice by the production guarantee;

(2) Multiplying each result in section 10(b)(1) above by the price election;

(3) Totaling the results in section 10(b)(2);

(4) Multiplying the total production to count for each type and practice by the price election;

(5) Totaling the results of each crop type in section 10(b)(4);

(6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3);
and

(7) Multiplying the result in section 10(b)(6) by your share.

(c) The total forage seed production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached and if:

(A) You do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisals made prior to giving consent to put the acreage to another use will be used to determine the amount of production to count);

(B) You elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage in accordance with section 10 (e).

(d) In addition to the provisions of section 15 of the Basic Provisions, we may determine the amount of production of any unharvested forage seed on the basis of our field appraisals conducted after the normal time of harvest for the area. If the acreage is later harvested, production records must be provided and if the harvested production exceeds the appraised production, the claim will be adjusted.

(e) Production not meeting the minimum quality requirements contained in the forage seed contract or certifying agency's standards based on tests conducted by a qualified seed testing laboratory due to insurable causes will be reduced as follows:

- (1) Divide the actual value by the base price for the insured type; and
- (2) Multiply the result (not to exceed 1.0) by the number of pounds of such production.

Example:

You have a 100 percent share and 100 acres of forage seed in the unit, with a guarantee of 600 pounds per acre on 75 acres of an established stand of forage seed and a guarantee of 300 pounds per acre on 25 acres of a spring planted seed-to-seed year stand. All acreage is contracted with a base price of \$1.20 per pound and you have selected 100 percent of the base price. Losses due to insured causes of loss have reduced production and quality and you only harvested 37,000 pounds of seed. A portion of the total production was of poor quality; 10,000 pounds of seed failed to achieve the contract minimum germination requirement; and the salvaged production was valued at \$0.80 per pound. Your indemnity would be calculated as follows:

- (1) $75 \text{ acres} \times 600 \text{ pounds} = 45,000 \text{ pound guarantee}$
 $25 \text{ acres} \times 300 \text{ pounds} = 7,500 \text{ pound guarantee;}$
- (2) $45,000 \text{ pounds} \times \$1.20 \text{ per pound price election} = \$54,000 \text{ value guarantee}$
 $7,500 \text{ pounds} \times \$1.20 \text{ per pound price election} = \$9,000 \text{ value guarantee;}$
- (3) $\$54,000 + \$9,000 = \$63,000 \text{ total value of the guarantee;}$
- (4) $27,000 \text{ pounds met the contract quality requirements} = 27,000 \text{ pounds production to count}$

$27,000 \text{ pounds} \times \$1.20 \text{ per pound} = \$32,400$ $10,000 \text{ pounds} \times (\$0.80 \text{ per pound} / \$1.20 \text{ per pound}) = 6,667 \text{ pounds production to count}$

$6,667 \text{ pounds} \times \$1.20 \text{ per pound} = \$8,000;$

(5) $\$32,400 + \$8,000 = \$40,400$ total value of production to count;

(6) $\$63,000 - \$40,400 = \$22,600$ loss; and

(7) $\$22,600 \times 100 \% \text{ share} = \$22,600$ indemnity payment.

11. Late and Prevented Planting.

The late and prevented planting provisions of the Basic Provisions are not applicable for forage seed.

Signed in Washington, D.C., on August 20, 2013._____.

Brandon Willis
Manager
Federal Crop Insurance Corporation

[FR Doc. 2013-20802 Filed 08/28/2013 at 8:45 am; Publication Date: 08/29/2013]